IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2285 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
VISHNUBHAI NATHABHAI PATEL & 1

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Appearance :
MR KC SHAH APP for Appellant
None for Respondents No.1-2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] The above referred criminal appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the Assistant Sessions Judge, District: Mehsana on 31st July, 2004 in Special Case (Atrocity) No.2/2004. Learned trial Judge acquitted both the present respondents being accused of the said Special Case (Atrocity) for the offences punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code, for the offence punishable under Section 135 of the Bombay Police Act as well as for the offence punishable under Section 3(1)(10)of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[2] According to the prosecution case, the incident in question occurred on 30th September, 2003 at about 10.00 a.m. Near Village : Ridrol, Near Mansa Road where Mansarovar Cold Storage was situated. On that day, complainant – Pravinkumar Kachrabhai Solanki along with Jagdishbhai Manharbhai Parmar, P.W.2 were going on cycle, both accused confronted them on scooter. Both the accused halted complainant and Jagdishbhai and stated that why complainant was filing false complaints against them. Accused – Vishnubhai Nathabhai Patel stated that if earlier complaint had not been withdrawn by them, they would not be allowed to enter in Panchayat and Vishnubhai Nathabhai Patel also uttered insults about the caste of the complainant. The complainant stated that he filed the earlier complaint because he was harassed by accused. Thereupon, accused No1 - Vishnubhai Nathabhai Patel was provoked and he caught hold of shirt of complainant and slapped the complainant. While accused No.2 – Atmaram Somabhai Patel inflicted a blow with an iron rod

on right ankle of the hand of the complainant. Jagdishbhai intervened and, thereafter, accused went away from that place, but they threatened that on that day, he was saved on account of Jagdishbhai, but the complainant would be killed if he was found alone. Jagdishbhai brought the complainant at Government Hospital, Mansa on cycle. Doctor treated the complainant and he was sent to Police Station, but police did not record the complaint of the complainant and, therefore, according to him, he filed a private complaint in the Court of Judicial Magistrate, First Class at Mansa on 30th September, 2003.

[3] The said complaint came to be recorded as Criminal Inquiry No.45/2003 and learned Magistrate passed an order below complaint to forward the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. The said complaint was registered before the Mansa Police Station as M. Case No.8/2003 and after investigation, a charge-

sheet came to be filed against both the accused for the offences punishable under Sections 323, 504, 506(2) and 114 of the Indian Penal Code as well as for the offence punishable under Section 3(1)(10)of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said case was registered as Criminal Case No.957/2003 before the Court of learned Judicial Magistrate, First Class and the same was committed to the Special Judge and was registered as Special Case (Atrocity) No.2/2004. Learned Special Judge, vide Ex.6 framed charges against both the accused for the above said offences on 21st June, 2004 and both the accused vide Exs.7 and 8 pleaded not guilty.

[4] Learned Special Judge examined as many as 10 witnesses and prosecution submitted on record necessary documents to prove its case. After the trial was over, further statements of each of the accused came to be recorded by the Special Judge under Section 313 of the Code of Criminal

Procedure wherein each of the accused after denying the evidence of the prosecution, further stated that the complainant had filed a complaint under Section 3(1)(10)of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 22nd March, 2003 and police had not taken any action in the said complaint. The accused further stated that on account of that grievance, the complainant had preferred above said false complaint against them.

[5] After hearing prosecution as well as defence as aforesaid, learned Special Judge came to the conclusion to acquit both the accused and hence, this appeal by the State.

[6] Learned APP Mr.K.C.Shah for the State submitted that in the trial, injured witness, complainant – Pravinkumar was examined and in his support, witness – Jagdishbhai Manharbhai Parmar was also examined. Both of them have supported the prosecution case and even then the learned

trial Judge acquitted both the accused only on the ground that the complainant had preferred complaints earlier and that P.W.2 – Jagdishbhai was interested witness. It is submitted that the reasoning and the findings of the learned trial Judge appears to be perverse and at least at this stage, the matter requires consideration. It is submitted that there is no dispute that the complainant belongs to scheduled caste and necessary certificate is produced on record at Ex.9.

[7] At this juncture also, we have carefully scrutinized the evidence recorded during the trial and vital features of the matter. We have examined the appeal from the point of view of probabilities arising out of the circumstances of the case. We have also scanned the findings recorded by the trial Court for acquitting both the accused. We have called for Record & Proceedings from the trial Court which we have carefully gone through. The learned APP has

provided us with extra copies of the evidence recorded during the trial and necessary documents.

[8] According to the prosecution case, **P.W.1** – Pravinkumar Kachrabhai Solanki examined at Ex.13 he stated that he filed a complaint which is on record at Ex.14. He has been cross-examined by the defence in detail. **P.W.2** – Jagdishbhai Manharbhai Parmar, an eye witness examined at Ex.15 stated that while he along with complainant – Pravinbhai were going on cycle, both accused came there on scooter and halted them. Accused – Vishnubhai asked complainant as to why a false complaint came to be filed against him and the same should be withdrawn. The complainant replied that he was earlier beaten by the accused and abused and, therefore, he had filed the complaint. On saying so by the complainant, accused – Vishnubhai provoked and, he caught hold of the complainant and slapped him. Second accused – Atmaram took out an iron rod from the

dickey of the scooter and inflicted a blow on the right ankle of the hand of the complainant. This witness stated that he intervened and saved the complainant from the accused. While going, accused – Vishnubhai threatened the complainant to kill and uttered words to insult the caste of the complainant. The complainant, thereafter, was shifted by him to Mansa Civil Hospital on cycle. According to this witness, one Laxmanji also intervened in that quarrel, who was coming on cycle. He has been cross-examined by the defence in detail and according to him, this quarrel lasted for about 15 minutes. He requested not to quarrel and Laxmanji also attempted to pacify the accused. He tried to prevent the accused from taking out an iron rod from the dickey of the scooter. At that time, Laxmanji was standing near Vishnubhai and was preventing Vishnubhai and Pravinbhai both, then he was asked about the location of the scene of offence and surrounding situation. He stated that he did not know anything about the incident which took place

earlier on 22nd of the same month. In his cross-examination, he further stated that they had been to Police Station, but police did not record their complaint and no written complaint was given by them. He stated that when they reached at the Police Station, the cloths of the complainant were blood stained. Police recorded his statement on the next day. He was asked about the contradiction that he did not state before the police that the accused took out an iron rod from the dickey of the scooter and about the actual words uttered by the accused to insult the caste of the complainant. According to the defence, these facts were not stated by the witness before the police. The witness denied that he had not stated those facts before the police. **P.W.3** – Holabhai Bhalabhai Raval examined at Ex.16, was panch of panchnama of Ex.17 of scene of offence, but this witness has not supported the prosecution case and stated that his signature was taken on blank paper. **P.W.4** – Nathuji Hemtuji Chavda examined at Ex.18, was

second panch of panchnama at Ex.17 of scene of offence, but he has also not supported the prosecution case. **P.W.5** – Vishnubhai Kodarji Makvana examined at Ex.19, was panch of panchnama produced at Ex.20. This is a panchnama, Ex.20 by which the accused – Atmaram presented an iron rod before the police by his own will and seized by the police. But this witness Vishnubhai did not support the panchnama at Ex.20 and stated that in blank paper his signature was obtained by police. This witness was declared hostile. **P.W.6** – Chavda Natuji Viramji examined at Ex.21, was second panch of panchnama at Ex.20. But he has also not supported the prosecution case. **P.W.7** – Dr. Dineshkumar Narhariprasad Barot examined at Ex.24, was the then Medical Officer serving at Public Health Center, Mansa on 30th September, 2003. On that day at about 13.30 hours, complainant approached him without police yadi and stated that Atmaram had given him a blow by iron rod at 10.30 a.m. The patient was examined by Doctor and he found that there was abrasion at

about 1 cm X 1 cm on medial surface at right arm. He had complaint of burning in passing urine and back ache. According to him, the injury can be caused by hard and blunt substance. He produced on record certificate at Ex.25 and stated that the injuries could be caused by muddamal article No.1 iron rod. In his examination-in-cross, he stated that an iron rod was about 4 feet in length and it could not be kept in dickey of the scooter. According to him, injuries No.1 and 3 could be caused by an iron rod. He stated that injury No.1 was superfluous and simple. He also admitted that article No.1 was wrapped by wire and if any injury was caused by that iron rod, injury would have impression of that wire. There was no injury on cheek of the complainant. He admitted that injury No.3 could not be seen by open eyes. There was only a complaint of pain. He admitted that there were other reasons for complaint of burning sensation in passing urine. He stated that even then, this case was of medico legal, he did not inform the police. He

has instructed the complainant to file the complaint before the police. **P.W.8** - Laxmanji Somaji Thakor examined at Ex.26, was an eye witness and stated before the Court that while he was going to Mansa at about 1 k.m. away from Bus Stand, he noticed persons quarreling. Those persons were complainant – Pravinbhai and accused. Accused – Vishnubhai had caught hold of the complainant and after insulting his caste, inflicted blow and slapped him. He intervened in the quarrel and, thereafter, while going from the scene of offence, both of the accused threatened the complainant to kill and also uttered the word to insult the caste of the complainant. Jagdishbhai took complainant to Hospital, while he went to his sister's house. In his examination-in-cross, he stated that in earlier case, he was not witness of the complaint of the complainant – Pravin filed against the accused. According to this witness, an iron rod was kept on carrier of the scooter. He denied that he had not seen the incident and the defence asked the

contradiction of the witness and the witness admitted that he did not state before the police that the accused – Vishnubhai had caught hold the complainant – Pravin and after insulting his caste slapped him. He admitted that he did not state before the police that accused went near the scooter and took out an iron rod and inflicted a blow on right ankle of complainant's hand. He also admitted that he did not state before the police that when accused were pacified by him, the accused threatened complainant to kill and again insulted the caste of the complainant. He denied the fact that he stated before the police that he did not know anything about the incident and that Pravin had wrongly given his name as witness. He denied the fact that he also stated before the police that complainant – Pravinbhai Solanki was in habit of filing false complaints and applications and Parmar Jagdishbhai and Manharbhai were his associates and in those complaints, both of them ordinarily stood as their witnesses. **P.W.9** – PSI

Dhiraj Rameshchandra Patel, examined at Ex.28 stated that on 30th September, 2003, he was entrusted the investigation of M. Case No.8/2003 and on 1st October, 2003, he draw the panchnama of scene of offence, recorded the statements of the witnesses, draw other panchnamas and arrested both the accused on 17th October, 2003. He, thereafter, entrusted the investigation to Senior PSI Shri V.R.Patel because he was transferred from Mansa Police Station. In his cross-examination, contradiction of the witnesses were asked by the defense. **P.W.10** – Thakor Kanaji Jenaji examined at Ex.30, is second Investigating Officer and according to him Shri V. R. Patel, the then P.S.I. of Mansa Police Station in charge of the investigation was transferred elsewhere on 8th November, 2004 and investigation of this case was entrusted to him. He took the charge of the investigation from the office and submitted a charge-sheet. This is all the evidence of the prosecution.

[9] Appreciating the above evidence, learned trial Judge, in paragraph No.14 of the judgment, observed that the complainant admitted that on 22nd March, 2003 he filed complaint against 15 members of the Panchayat. The scene of offence of the present case was a place where people used to pass through. The complainant did not say anything about the witness – Laxmanji, while P.W.2 so-called Jagdishbhai involved Laxmanji in the incident as witness. According to the learned trial Judge, P.W.-2 Jagdishbhai Manharbhai Parmar happened to be interested witness belonged to the same community of the complainant. He attempted to support the complainant, but he was not a reliable witness, because according to the prosecution case, as disclosed by the complainant that Laxmanji was not an eye witness and this witness attempted to involve Laxmanji as eye witness. Learned trial Judge further observed that from the evidence of Laxmanji and the contradiction proved by the defence, it becomes clear that he did not state anything about the

incident before the police, but on the contrary stated that the complainant was in habit of filing false complaints and Jagdishbhai was his witness in such complaints. About the iron rod, there were contradictions in the evidence of the witnesses. This witness – Laxmanji stated that iron rod was kept on carrier of the scooter. On probability, the learned Judge observed that muddamal article No.1 could not have been kept in dickey of the scooter because the same was about 4 feet in length and it was improbable that the iron rod could have been placed in dickey of a scooter.

[10] About the medical evidence, the learned trial Judge appreciating the evidence, came to the conclusion that the injuries received by the complainant were very simple. Learned trial Judge also came to the conclusion that ocular evidence of the witness and the medical evidence was not in conformity and was in conflict. It is observed that the three injuries mentioned in Ex.25 are

the injuries, according to the ocular evidence might have not been caused during the incident. Learned trial Judge referred to the injury No.1 which was abrasion on upper arm, while in other two injuries, one was back ache and burning sensation in passing urine. While appreciating the evidence of witness, it is revealed that accused No.2 – Atmaram inflicted one iron blow on right ankle of the hand of the complainant. No such injury was found by medical officer as stated by the witnesses. Back ache and injury No.2 mentioned in certificate at Ex.25 appears to have no nexus with the incident and hence, learned trial Judge observed that appreciating the medical evidence and the evidence of complainant and the witness in juxtaposition, it was clear that ocular evidence and medical evidence were in conflict in a manner creating doubt in prosecution case more particularly in the say of the complainant and eye witnesses. Referring to the panchnamas at Ex.17 and 20, it was observed by the learned trial Judge that both

panchnamas could not be proved by the prosecution as none of the panchas of these two panchnamas supported the prosecution case and hence more particularly, the fact that iron rod, muddamal article No.1 was produced by the accused, could not be proved by the prosecution through panchnama at Ex.20. With regard to the charges against the accused for the offences under the Scheduled Tribes (Prevention of Atrocities) Act, 1989, learned trial Judge observed in paragraph No.18 that there is contradiction amongst witnesses about the actual word uttered by the accused to insult the caste of the complainant. A fact is also taken into consideration by the trial Court along with this circumstance that it was an admitted fact that this very complainant had filed a complaint against 15 members of the Panchayat Body and during investigation, police found no substance and asked for “B” Summary. There was no cogent evidence to come to the conclusion that the complainant resorted to police before filing of private complaint before

the Court because police refused to record the complaint of complainant, P.W.1 – Pravinkumar. From the evidence of prosecution itself it has come on record that complainant was in habit of filing such complaints. This is evident from the evidence of P.W.3 – Laxmanji Somaji. According to the trial Court, when it could not be proved beyond doubt by the prosecution that accused inflicted injuries to the complainant on right ankle of the hand because no such medical evidence was available, the whole evidence, appreciating in the totality of the circumstances, was doubtful.

[11] This is an appeal against the order of acquittal and the scope of appeal is well defined. There may be legitimate second view possible from the evidence recorded then taken by the trial Court, but no interference is permitted in the order of acquittal, unless it is found that the order of acquittal is perverse, palpably wrong and demonstrably unsustainable.

[12] When we scan the evidence recorded during the trial and the findings arrived at by the trial Court without any hesitation, we find that findings arrived at by the trial Court are plausible, probable and cogent and requires no interference in this appeal. The findings arrived at by the trial Court are based upon the evidence recorded and proper appreciation of the whole prosecution case. Therefore, at this juncture also, we find no substance in the present appeal.

[13] The learned trial Judge also came to the finding that the investigation in the matter was carried out by a cadre of Police Officer of Police Sub-Inspector in breach of the Rules framed under the Scheduled Tribes (Prevention of Atrocities) Act, 1989 wherein Rules mandate, investigation by an officer of cadre of Deputy Superintendent of Police and not below an officer of that rank. According to the learned trial Judge, on account of this statutory breach also trial stood vitiated.

[14] We make it clear that we do not deal with the above aspect but on facts as discussed above, we have found that even from the evidence recorded during trial, the prosecution failed to prove the case against the accused beyond reasonable doubt and the findings recorded by the trial Court for acquittal of the accused are proper and do not require any interference.

[15] In view of the above, the following order is passed.

Leave to appeal is refused. Appeal stands dismissed.

[J. R. VORA,J.]

[SMT. ABHILASHA KUMARI,J.]

(vijay)